IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Kishannath & Ors. v. State of Rajasthan & Ors.

S.B.CIVIL WRIT PETITION NO.1642/1989
under Article 226 of the Constitution of India.

Date of Order : 12th January, 2006

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Sudhir Sharma, for the petitioners.
Mr. B.L.Tiwari, Dy.Govt.Advocate.
Mr. K.L.Thakur, Addl.Advocate General.
Mr. Mahendra Kumar Goyal, for the respondents.

BY THE COURT :

The Sub Divisional Officer, Nagaur initiated proceedings against one Shri Moti Singh under Chapter III-B of the Rajasthan Tenanct Act and dropped the same by an order dated 30.9.1972. The proceedings under Chapter III-B of the Rajasthan Tenancy Act against aforesaid Moti Singh were ordered to reopen by the State Government and the Additional Collector, Nagaur in pursuant thereto after holding an inquiry held that Shri Moti Singh was having 410.19 bighas of land in excess to the ceiling limits. The proceedings by the Additional Collector were conducted against

Shri Laxmannath, Gulabnath and Surajnath sons of Shri Motinath who died during pendency of the proceedings aforesaid. The Additional Collector while determining 410.19 bighas of land in excess than to prescribed ceiling limits for agricultural land holding did not recognise six gift deeds executed by Moti Singh on 10.2.1965 in favour of his grand sons and great grand sons.

The assessees gave challenge to the order passed by Additional Collector on 18.7.1984 by way of filing an appeal under Section 23(2)(A) of the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (hereinafter referred to as "the Act of 1973") before the Board of Revenue for Rajasthan, Ajmer. While pursuing the appeal the assessees did not press the finding given by Additional Collector with regard to not treating the donees (grand sons and great grand sons of Shri Moti Singh) agriculturists by profession. The only question sought to be adjudicated before the Board of Revenue was the number of family members of assessee Motinath on 1.4.1966. The Board of Revenue after considering the contentions raised by counsel for assessee held that the family of late Shri Moti Singh was consisting of more than 11 members, accordingly the Board found only 48.9 bighas land in excess with the assessee. An order was passed to resume the same.

The present writ petition is preferred by grand sons of assessee Shri Moti Singh. The petitioners have given challenge to the orders passed by the Additional Collector, Nagaur and the Board of Revenue for Rajasthan, Ajmer, however, surprisingly enough at the time of hearing instead of giving challenge to the orders referred above much insistence is given to examine vires of provisions of Rule 17(1) of the Rajasthan Imposition of Ceiling on Agricultural Holdings Rules, 1973 (hereinafter referred to as "the Rules of 1973").

Rule 17 of the Rules of 1973 pertains to allotment of vested surplus land. According to it subject to provisions contained in sub-rules(2), (3) and (4) and Rules 18, 19, 20 and 21 the surplus land vested in government under any law relating to imposition of ceiling on agricultural holdings shall be allotted in accordance with the Rajasthan Land Revenue (Allotment of land for Agricultural Purposes) Rules, 1973 in non-project area.

The contention of counsel for the petitioners is that under Rule 17 the State Government is empowered to make allotment of land in accordance with the Rajasthan Land Revenue (Allotment of land for Agricultural Purposes) Rules, 1973 in non-project area. In the aforesaid Rules an amendment was introduced on 13.3.1981 empowering the Government to

allot land in project areas, irrespective to the law under which it was acquired. According to counsel for the petitioners prior to amendment aforesaid the allotment was required to be made under the Rules in which it stood vested with Government. By introducing of term “any law” in Rule 17 the State Government become empowered to make allotment of land which never vested with Government under the Rules of 1973. It is claimed by the petitioners that the land is required to be allotted to them from the land which was resumed by the Government of Rajasthan under the old ceiling law i.e. under Chapter III-B of the Rajasthan Tenancy Act.

This Court while admitting the writ petition for hearing by an order dated 17.5.1989 restrained the respondents from dispossessing the petitioners from the land in question. The petitioners stated in the writ petition that they were having possession over the land as lease was granted in their favour for temporary cultivation. It is pertinent to note that the land in question is the same which was resumed by Government of Rajasthan from the ancestors of the petitioners. The assessee Motinath was grand father of the petitioners. By the present writ petition an effort is made by the petitioners to get the same land allotted to them for permanent cultivation which was resumed by the Government as the land held by ancestors of the petitioners in excess to ceiling

limits. It is further surprising that the licence for temporary cultivation of the land was given to the petitioners by authorities of the respondents, after getting the same vested with Government. In fact the petitioners have tried to frustrate the total proceedings conducted against Shri Motinath and his heirs under Chapter III-B of the Rajasthan Tenancy Act. The challenge given by the petitioners to the provisions of Rule 17 of the Rules of 1973 is in fact not at all available to them in present set of facts.

The entire writ petition is not only misconceived but appears to be mischievous also, as the petitioners by it want to frustrate the proceedings made against their ancestors under old ceiling law. Accordingly the same is dismissed.

(GOVIND MATHUR),J.

kkm/ps.